OCT 9 1961
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IN THE

Supreme Court of the United States

October Term, 1961

No. 483

DOUGLAS ANDERSON and FRED PADILLA,
Petitioners,

vs.

STATE OF CALIFORNIA.

PETITION FOR WRIT OF CERTIORARI TO THE STATE OF CALIFORNIA AND TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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PETITION FOR WRIT OF CERTIORARI TO THE STATE OF CALIFORNIA AND TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Petitioners, Douglas Anderson and Fred Padilla, respectfully pray that a Writ of Certiorari issue to review the judgments of the Supreme Court of the State of California, which said judgments affirmed convictions of grand theft as alleged in Count I and attempted grand theft in Count II, of an Information filed by the District Attorney of the County of Los Angeles, State of California. The defendants (your petitioners) were committed to the penitentiary for the term prescribed by law.

Thereafter, an appeal was taken and the matter came on to be heard before the District Court of Appeal of the State of California, in and for the Second Appellate District, Division Three, in Criminal No. 7150; decision filed December 20, 1960.[1]

That court, namely the District Court of Appeal, held that under neither count would the acts of the defendants (petitioners) in this state (California) amount to an attempt, and that the trial court did not have jurisdiction to try or convict defendants of the offenses charged in the Information. The judgments were reversed (187 A.C.A. 627; 10 Cal. Rptr. 64).

Thereafter, a petition was filed by the Attorney General of the State of California with the Supreme Court, and that court, on April 20, 1961, reversed the Appellate Court and affirmed the convictions (55 A.C. 19, p. 659).

A Petition for Writ of Habeas Corpus, or, in the alternative, for a Writ of Error Coram Nobis, Points and Authorities, for an Order to Recall the Remittitur, and for a Rehearing, was filed with the Supreme Court of the State of California, and the said Petition for Writ of Habeas Corpus was, by said Supreme Court of California, denied on the 13th day of September, 1961 (Minutes, Supreme Court of California, A.C. p. .....).

[1]The District Court of Appeal is an intermediate appellate court in the State of California.

A copy of the said Writ of Habeas Corpus, or, in the alternative, for a Writ of Error Coram Nobis, Points and Authorities, for an Order to recall the Remittitur, and for a Rehearing by the Supreme Court of California, duly certified by the Clerk of the Supreme Court of the State of California, are contained in the record filed with the Clerk of this Court.

OPINIONS BELOW

The Opinion of the District Court of Appeal of the State of California, Second Appellate District, Division Three, is made a part of the record herein, duly certified by the Clerk of the Supreme Court of California, filed herewith, and is reported at 187 A.C.A. 627 (10 Cal. Reporter 64). A copy of the said District Court's Opinion is attached hereto in the Appendix, marked Exhibit "A."

A copy of the Petition for Hearing in the Supreme Court of the State of California, by the Attorney General of the State of California, is contained in the record, duly certified and filed herewith.

A copy of the Opinion of the Supreme Court of the State of California, which said Opinion was rendered April 20, 1961, is filed herewith, duly certified by the Clerk of the Supreme Court of the State of California, and is reported in 55 A.C. 19, p. 659. A copy of said Opinion of the Supreme Court is attached hereto in the Appendix, marked Exhibit "B."

The Petition for Writ of Habeas Corpus was filed with the Clerk of the Supreme Court on or about the 19th day of August, 1961, and was by that court denied September 13, 1961. (See Minutes, California Supreme Court, A.C., Minutes, p. .....). No Opinion was filed. The Supreme Court order merely provided: "Petition for Writ of Habeas Corpus denied," bearing the number of the Supreme Court, No. 6964, Anderson and Padilla on Habeas Corpus.

JURISDICTION

I.

The Petition for Writ of Habeas Corpus, or, in the Alternative, for a Writ of Error Coram Nobis, Points and Authorities, for an Order to Recall the Remittitur, and for a Rehearing before the Supreme Court of the State of California, was filed on or about the 19th day of August, and was by the Supreme Court of California denied on September 13, 1961.

II.

The statutory provisions believed to confer upon this Court jurisdiction to review the judgment or order denying the Petition for Writ of Habeas Corpus, or, in the alternative, for a Writ of Error Coram Nobis, and to Recall the Remittitur, and for a Rehearing, are 28 U.S.C., Section 2101(d), Rules 21 and 22 (1) of

this Court, 28 U.S.C., Section 1257, and 28 U.S.C., Section 2101.

QUESTIONS PRESENTED

The Superior Court of the State of California, in and for the County of Los Angeles, the trial court, did not have jurisdiction over an offense if it be one which was committed within the State of Nevada.

STATUTES INVOLVED

Section 487(1), Penal Code, California:

> "Grand theft is theft committed in any of the following cases:
>
> 1. When the money, labor or real or personal property taken is of a value exceeding two hundred dollars ($200); provided, that when domestic fowls, avocados, citrus or deciduous fruits, nuts and artichokes are taken of a value exceeding fifty dollars ($50); provided, further, that where the money, labor, real or personal property is taken by a servant, agent or employee from his principal or employer and aggregates two hundred dollars ($200) or more in any 12 consecutive month period, then the same shall constitute grand theft. . . ."

Section 664, Penal Code, California:

> "Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no

provision is made by law for the punishment of such attempts as follows:

1. Offense punishable by five years or more. If the offense so attempted is punishable by imprisonment in the state prison for five years, or more, or by imprisonment in a county jail, the person guilty of such attempt is punishable by imprisonment in the state prison, or in a county jail, as the case may be, for a term not exceeding one-half the longest term of imprisonment prescribed upon a conviction of the offense so attempted; . . . "

STATEMENT OF THE CASE

By an Information filed by the District Attorney of the County of Los Angeles, State of California, the petitioners were charged as follows:

Count I: The said DOUGLAS ANDERSON and FRED PADILLA are accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of GRAND THEFT in violation of Section 487, Subdivision 1, Penal Code of California, a felony, committed as follows: That the said DOUGLAS ANDERSON and FRED PADILLA on or about the 6th day of December, 1958, at and in the County of Los Angeles, State of California, did willfully, unlawfully and feloniously take Forty Nine Hundred and 00/100 Dollars ($4900), in money lawful money of the United States, the personal property of John P. Lane.

Count II: For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charge set forth in Count I hereof, the said DOUGLAS ANDERSON and FRED PADILLA are accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of ATTEMPTED GRAND THEFT in violation of Section 487, Subd. 1 P.C. and Sec. 664 P.C., a felony, committed as follows: That the said DOUGLAS ANDERSON and FRED PADILLA on or about the 27th day of January, 1959, at and in the County of Los Angeles, State of California, did willfully, unlawfully and feloniously attempt to take Four Thousand and 00/100 Dollars ($4000), in money, lawful money of the United States, the personal property of A. B. Valenzuela."

Thereafter, the defendants (petitioners) were tried by jury and convicted. Motions for new trial were denied. Judgment was pronounced sentencing the petitioners to the penitentiary. They appealed to the District Court of Appeal of the State of California, an intermediate appellate court, and the convictions were reversed.

Thereafter, a Petition for Hearing before the Supreme Court of the State of California was granted, and the Supreme Court of the State of California, by its decision, reversed the District Court of Appeal and affirmed the judgment of the trial court.

SPECIFICATIONS OF ERROR

The Superior Court of the State of California, in and for the County of Los Angeles, would not have jurisdiction to try an offense, if any, which was committed within the State of Nevada. It amounted to a denial of due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States, and denied to these defendants a fair trial. The Superior Court of the State of California had no jurisdiction to proceed, and the decision of the learned Supreme Court of the State of California is in violation not only of due process of law, but of its own decisions.

STATEMENT OF FACTS PERTINENT TO THE APPEAL

One, John P. Lane, had known defendant, petitioner Padilla about a year before December 5, 1958. He had placed bets with Padilla. Padilla talked with Lane about a business proposition. He introduced Anderson to Lane under the name of McKinny, and as a gambler from Las Vegas who had a system making it impossible to lose at roulette; that they knew the dealers; that both Padilla and Anderson were well known in Las Vegas as "marked" men; and that they needed a reputable businessman to front for them. They were broke and needed a businessman to front and provide a bankroll. Lane was asked if he could

raise $5,000. He said he could. He asked what percentage of the winnings he would receive, and it was agreed that he would get fifty percent (50%). Lane was told to make his own reservations to Las Vegas, which he did. Petitioners and Lane met in Las Vegas. After arrival there, Lane was asked how much money he had, and he said $4,000, and Anderson stated it would take $5,000. Lane said he could, and he did, cash a check for $1,000. Anderson met Lane and they went to the Star Dust, a hotel and gambling casino. Lane bought some chips and won a little bit of money at the "crap table." Sometime later in the evening, Anderson said, "It's getting kind of late. We'd better cash that money in $100 chips so we will be ready to play roulette at 7:20. Why don't you go ahead and continue playing, and I will run over and get the $100 chips at the cashier's window, and I will be right back with your chips. Then you can start playing roulette at 7:20."

Anderson said, in response to an inquiry by Lane, "they won't give you $100 chips at the table. You have to get them at the cashier's window." Lane gave McKinny $4,900 in $100 bills with which to buy the chips. McKinny went to the window, where Lane saw him, and Lane turned to the dice table. Later when he looked up, he did not see Anderson. He gambled about fifteen minutes. He did not see McKinny after that. (Anderson is known as McKinny).

Later in Los Angeles, Lane talked with Padilla and

accused him of "setting him up." Padilla said, "Honest, Johnny, I didn't have nothing to do with it. I never knew he ran out with the money." Later, Padilla gave Lane a note for $4,900. The note was not paid promptly, and Lane complained to the District Attorney of Los Angeles County.

The second count related to one, Valenzuela, who was introduced to Padilla, and Padilla told him "he had a deal in Las Vegas where they could make money." Valenzuela met Padilla and Anderson at a gambling club in Gardena, Los Angeles County, and they talked about a deal to clean up in Las Vegas. Valenzuela had contacted the District Attorney and there was some recording at Valenzuela's room. Padilla went to Valenzuela's house that evening. The investigators from the District Attorney's office were introduced as oil men. Padilla and Valenzuela went out for a drink and returned, at which time Padilla told Valenzuela they were to play dice and black jack. Valenzuela showed Padilla a large roll of bills and said he had $4,000. Padilla was arrested as he left the room.

THE LEGAL PROCEEDINGS IN NEVADA

The petitioners were charged in the Justice Court of Las Vegas Township, in and for the County of Clark, State of Nevada, in Case No. 103, Docket 17-A, with a felony, in that "on or about the 7th day of December, 1958, at and within the County of Clark, State of Nevada, being then and there bailees of $4900.00 lawful money of the United States, the property of JOHN P. LANE, for the purpose of changing same into chips, did then and there wilfully, unlawfully and feloniously convert the same to their own use with the intent to permanently deprive the owner thereof."

Therafter, a preliminary examination was conducted before the said court; witnesses were called and testified, and the defendants were held to answer for the crime of embezzlement.

Thereafter, in the Eighth Judicial District Court of the State of Nevada, on or about August 7, 1959, in Case No. 852, the District Attorney of the County of Clark, State of Nevada, at Las Vegas, Nevada, filed an Information entitled, "The State of Nevada, Plaintiff, vs. Douglas Roger Anderson and Fred Padilla, also known as Freddie Estabal Padilla, Defendants," being the petitioners in this case. Said Information charged that the defendants on or about the 7th day of December, 1958, at and within the County of Clark, State of Nevada, being then and there bailees of $4900.00, lawful money of the United States, the prop

erty of John P. Lane, for the purpose of changing same into chips, did then and there wilfully, unlawfully, and feloniously convert the same to their own use with the intent to permanently deprive the owner thereof, contrary to the form, force and effect of statutes in such cases made and provided and against the peace and dignity of the State of Nevada.

Thereafter, the said Information was dismissed.

SUMMARY OF ARGUMENT

It is our contention that from the facts in this case, as hereinbefore related, no offense was committed within the State of California, and, in fact, the complaining witness was a party to a criminal proceeding in the State of Nevada, involving the same transaction, as shown by the summary hereinbefore set forth. A complaint was filed in Nevada, in the Justice Court of Las Vegas township, in and for the County of Clark, State of Nevada, charging these defendants with having obtained $4,900 from J. B. Lane, as bailee, "for the purpose of changing the same into chips and then and there converting the same to his own use with intent to permanently deprive the owner thereof." As a matter of fact, a preliminary examination was held in Nevada. The defendants were held to answer, and subsequently the District Attorney of the Eighth Judicial District Court of the State of Nevada filed an Information, pursuant to the order of the Justice Court,

holding these defendants to answer, and the Information was couched in similar language. The Information was subsequently dismissed, but Nevada is the state within which the offense, if any, was committed, and Nevada accepted and pursued jurisdiction.

These defendants never, at any time, waived the right to assert jurisdiction, and jurisdiction itself cannot be waived, but, in fact, can be urged at any time, and it has been raised in California in the District Court of Appeal, which ruled in favor of the petitioners, and it was again asserted before the Supreme Court of the State of California.

ARGUMENT

I.

The Superior Court Of The State Of California (Trial Court), In And For The County Of Los Angeles, Did Not Have Jurisdiction Over The Offense Alleged, If It Be One, Which Was Committed Within The State Of Nevada. The Matter Had Not Progressed To The Point In California Where Any Public Offense Was Committed Within Its Jurisdiction. The Supreme Court Of The State Of California Was In Error. The Defendants Were Denied Due Process Of Law By Being Required To Stand Trial Within The State Of California, When, In Truth And In Fact, If Any Offense Was Committed, It Was Within The State Of Nevada, And Nevada Accepted Jurisdiction To The Point Of Holding The Petitioners To Answer And Filed An Information Against Them In The Trial Court It Was A Denial Of Due Process Of Law In Violation Of The Constitution Of The United States.

The Penal Code provides for punishment of all persons who commit a part of a crime within this State, or who, with intent to commit a crime, do any act within this State, in execution or part execution of such in-

tent, which culminates in commission of a crime in another state. (Pen. Code, Sections 27(1)[2] and 778a[3].)

In *People v. Buffum*, 40 Cal. 2d 709, it was held that these sections, construed in the light of the general principle that ordinarily a state cannot impose punishment for acts done outside its territory, require that the acts of the defendants within this state amount to at least an attempt. The court said (p. 716):

> "It is apparent from the authorities which have discussed subdivision 1 of section 27 and similar statutes in other jurisdictions that such a provision can apply where the acts done within the state are sufficient to amount to an attempt to commit a crime but not otherwise. . . . To read such a statute as authorizing the punishment by one state of acts which do not amount to an attempt but are merely preparatory to the commission of a crime in another state would seem tantamount to an effort to regulate conduct in the other jurisdiction. (Citation.)
>
> "Section 778a of the Penal Code should also be construed as applying only where the acts done within the state amount to an attempt. By its terms the section is limited to acts done 'in execution or part execution of' an intent to commit a crime, and these words are comparable to the ex-

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[2]Penal Code, section 27: "The following persons are liable to punishment under the laws of this state:

"1. All persons who commit, in whole or in part, any crime within this state. . . ."

[3]Penal Code, section 778a: "Whenever a person, with intent to commit a crime, does any act within this state in execution or part execution of such intent, which culminates in the commission of a crime, either within or without this state, such person is punishable for such crime in this state in the same manner as if the same had been committed entirely within this state."

pression 'in whole or in part' as used in subdivision 1 of section 27. The statute further requires that what is done in the state must be of such a nature that it 'culminates' in the commission of an offense, and this is analogous to the requirement in attempt cases that there must be a 'direct' ineffectual act towards consummation of the crime. (Cf. *People v Miller,* 2 Cal. 2d 527, 530 (42 P. 308).) Our construction of section 778a is in accord with the decision in *People v. MacDonald,* supra, 24 Cal. App. 2d 702, 709-711, which held that the section did not warrant a conviction for contracting an incestuous marriage where it appeared that the defendant and his daughter, while in California, formed an intent to marry and then traveled on a train from California to Arizona, in which jurisdiction the ceremony was performed."

The question is whether under each count the acts of the defendants in this State amounted to an attempt to violate Penal Code, Section 487(1).

Grand Theft under Penal Code, Section 487(1), is included in theft as defined in Penal Code, Section 484. (*People v. Coe,* 171 Cal. App. 2d 786, 792-3), which in turn includes larceny by trick and device and obtaining property by false pretenses. (*People v. Otterman,* 154 Cal. App. 2d 193, 205.) "Although the crimes of larceny by trick and device and obtaining property by false pretenses are much alike, they are aimed at different criminal acquisitive techniques. Larceny by trick and device is the appropriation of property, the

possession of which was fraudulently acquired; obtaining property by false pretenses is the fraudulent or deceitful acquisition of both title and possession. . . . The elements of the several types of theft included within section 484 have not been changed, however, and a judgment of conviction of theft, based on a general verdict of guilty, can be sustained only if the evidence discloses the elements of one of the consolidated offenses." (*People v. Ashley,* 42 Cal. 2d 246, 258.) If the acts of defendants committed in California amount to attempts to commit grand theft, they were attempts to commit larceny by trick and device.

"In order to establish an attempt, it must appear that the defendant had a specific intent to commit a crime and did a direct unequivocal act toward that end." (*People v. Gallardo,* 41 Cal. 2d 57, 66.) "Preparation alone is not enough, there must be some appreciable fragment of the crime committed, it must be in such progress that it will be consummated unless interrupted by circumstances independent of the will of the attempter and the act must not be equivocal in nature." (*People v. Buffum,* 40 Cal. 2d 709, 718; *People v. Miller,* 2 Cal. 2d 527, 530.) "Preparation is devising or arranging the means or measures necessary for the commission of the offense. The attempt is the direct movement toward the commission after the preparations are made." (*People v. Franquelin,* 109 Cal. App. 2d 777, 784.)

The question is whether the representations made by defendants amount to direct, unequivocal acts which would lead to consummation of offenses unless interrupted by circumstances independent of any actions on their part made by the petitioners.

The most that can be said here, we respectfully urge, is that Padilla introduced Anderson by a fictitious name. Anderson was disguised and the defendants told Lane they had a system which made it impossible to lose at roulette; that even if something went wrong, "they know the dealers and they knew the pit boss and everything else, and they were sure that it was a sure thing; you couldn't lose any money whatsoever." Lane was to make the bets. Padilla told Valenzuela, "He had a deal in Las Vegas that would make some money; he had things fixed and we could clean up; we would probably make $10,000 or $12,000 in a night." Anderson said he would lead; they would stay 10 or 12 feet behind him and when he told them the pitch was on they would start gambling.

The most that can be said, we respectfully urge, is that these representations came within the range of acts comprising some preparation, but are insufficient as acts amounting to attempts. Nothing was done in California to put this plan or scheme in effect by which they were deprived of their money. These representations, nor any of them, were sufficient to bring about the transfer of the money of the prosecuting witnesses.

who apparently were willing to enter into any scheme to win at gambling in Las Vegas. But none of these representations were sufficient to obtain possession of the money. Something had to be done in Nevada to set this entire plan into operation. Even the details of how they would expect to win were not discussed in California; there were no representations that the money was to be transferred to these petitioners as part of the plan. As a matter of fact, Lane testified that he was to make the pitch and Valenzuela was to start gambling when they were told "the pitch was on." The only thing which produced the delivery of the money was the statement by Anderson to Lane, "in Las Vegas" in the gambling casino, "I will run over and get the $100 chips at the cashier's window and I will be right back with your chips." It was not the plan or scheme by which the prosecution witnesses hoped to win at gambling, but some other means which finally cost them their money. The crime, if any, was committed in its entirety in Nevada. The decision of the Supreme Court of California is against its own decisions.

As was said in *People v. Buffum*, 40 Cal. 2d 709 (p. 718):

> "No case has been cited or found which holds that persons can be convicted of an attempt to commit abortions if they do no more within the state than make arrangements for transportation and then take women from California to Mexico

> for the purpose of performing abortions upon them in that country. It is our opinion that, under the rules set forth in the *Miller* case (2 Cal. 2d 527), such conduct is merely preparatory and does not constitute a direct, unequivocal act done toward the commission of the offense specified by section 274 of the Penal Code."

The Appellate Courts of California have repeatedly held that jurisdiction may not be waived or stipulated, and the decision by the Supreme Court of California, we respectfully urge, flies in the face of its own pronouncement, as hereinbefore set forth.

As was said in *In re Garrity,* 97 C.A. 2d, 372, "The lack of jurisdiction may not be waived or stipulated." The procedural due process rule to be applied here, it is respectfully urged, requires that the state court must give full force and effect to the mandatory procedural mandate of the statutes of the state where the offense, if any, was committed. The procedural due process requirements of the Fourteenth Amendment to the Constitution of the United States command this, we respectfully urge. See *Rochin v. California,* 342 U.S. 165:

> "However, this Court too has its responsibility. Regard for the requirements of the Due Process Clause "inescapably imposes upon this Court an exercise of judgment upon the whole course of the proceedings (resulting in a conviction) in order to ascertain whether they offend those canons of

decency and fairness which express the notions of justice of English-speaking people even toward those charged with the most heinous offenses."

CONCLUSION

WHEREFORE, petitioners respectfully pray that a Writ of Certiorari be granted directed to the State of California, to the end that a full hearing may be had herein, and to the end that these petitioners be granted a new trial, with orders to dismiss the proceedings in California for the reasons hereinbefore set forth; and for such other and further relief as to the Court may seem just in the premises.

Respectfully submitted,

RUSSELL E. PARSONS,
Attorney for Petitioners,
Douglas Anderson and
Fred Padilla.

HARRY E. WEISS
and
SHELDON W. ANDELSON,
Of Counsel.

EXHIBIT "A"

Opinion of the District Court of Appeal, Second Appellate District, Division Three, State of California, filed Dec. 20, 1960.

[Crim. No. 7150. Second Dist., Div. Three. Dec. 20, 1960.]

THE PEOPLE, Respondent, v. DOUGLAS ANDERSON et al., Appellants.

APPEALS from judgments of the Superior Court of Los Angeles County. Benjamin Landis, Judge. Reversed.

Prosecution for grand theft and attempt to commit grand theft. Judgments of conviction reversed.

Russell E. Parsons and Harry E. Weiss for Appellants.

Stanley Mosk, Attorney General, William E. James, Assistant Attorney General, and Ernest E. Sanchez, Deputy Attorney General, for Respondent.

VALLÉE, J.—By information defendants were accused of grand theft and attempt to commit grand theft. Count I accused them of unlawfully taking $4,900 cash from John P. Lane on December 6, 1958. (Pen. Code, § 487, subd. 1.) Count II accused them of unlawfully attempting to take $4,000 from A. B. Valenzuela on January 27, 1959. (Pen. Code, §§ 487, subd. 1, 664.) A jury found them guilty of both offenses. Motions for new trials were denied. Each defendant appeals from the judgment sentencing him to state prison.

The assignments of error are: 1. The information fails to state acts or omissions constituting a public offense with reasonable notice to the accused sufficient to prepare and present a defense; 2. there is no evidence of any element of either offense attempted to be charged shown to have taken place within the jurisdiction of the State of California.

The first assignment of error which, in effect, says neither count of the information states a public offense has no merit. The allegations of the information are stated in the margin.[1] "Section 952 [Pen. Code], which

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[1]Count I: "The said DOUGLAS ANDERSON and FRED PADILLA are accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of GRAND THEFT in violation of Section 487, Subdivision 1, Penal Code of California, a felony, committed as follows: That the said DOUGLAS ANDERSON and FRED PADILLA on or about the 6th day of December, 1958, at and in the County of Los Angeles, State of California, did willfully, unlawfully and feloniously take Forty Nine Hundred and 00/100 Dollars ($4900), in money, lawful money of the United States, the personal property of John P. Lane."

Count II: "For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charge set forth in Count I hereof, the said DOUGLAS ANDERSON and FRED PADILLA are accused by the

formerly required the pleading to set forth the particular circumstances of the offense charged, as amended, declares that it shall be sufficient if it be 'in any words sufficient to give the accused notice of the offense of which he is accused.' There, in a nutshell, is stated the principle of our present simplified form of pleading a criminal offense—the accused is entitled to notice of the offense of which he is charged but not to the particular circumstances thereof, such details being furnished him by the transcript of the testimony upon which the indictment or information is founded." (*People v. Beesly*, 119 Cal. App. 82, 85-86 [6 P. 2d 114, 970]; *People v. Braddock*, 41 Cal. 2d 794, 799 [264 P. 2d 521].) "Notice of the particular circumstances of the offense is given not by detailed pleading but by the transcript of the evidence before the committing magistrate (or the grand jury); defendant is entitled to such transcript under section 870 (or §925) of the Penal Code." (*People v. Roberts*, 40 Cal. 2d 483, 486 [254 P. 2d 501]; *People v. Yant*, 26 Cal. App. 2d 725, 730 [80 P. 2d 506].)

The information is so worded as to give defendants notice of the offenses with which they were charged. It meets the requirements of Penal Code, sections 951

District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of ATTEMPTED GRAND THEFT in violation of Section 487, Subd. 1 P.C. and Sec. 664 P.C. a felony, committed as follows: That the said DOUGLAS ANDERSON and FRED PADILLA on or about the 27th day of January, 1959 at and in the County of Los Angeles State of California did willfully, unlawfully and feloniously attempt to take Four Thousand and 00/100 Dollars ($4,000.00), in money, lawful money of the United States the personal property of A. B. Valenzuela."

and 952. At no time during the trial did defendants assert they were unaware of the charges made against them. The judgments do not, because of the form of the information, deprive defendants of due process of law, as they assert. (See *People v. Quinn,* 94 Cal. App. 2d 112, 116 [210 P. 2d 280]; *People v. Vetri,* 178 Cal. App. 2d 385, 393-394 [2 Cal. Rptr. 795].)

Count I

John P. Lane had known defendant Padilla about a year or more before December 5, 1958. He had placed bets with Padilla on a number of occasions. About December 5, 1958, Padilla telephoned Lane and said he had a business proposition he wanted to make to him. Lane said he would meet him at Pepper Mill Restaurant. Lane went to the restaurant. Padilla came in with another man whom he introduced to Lane as "Dan McKinny." McKinny is defendant Anderson. McKinny wore a wig, a long, heavy mustache, and heavy rimmed glasses. Lane asked Padilla what he had in mind. Padilla said McKinny was a professional gambler from Las Vegas; they had a system which made it impossible to lose at roulette, that even if something went wrong, "they knew the dealers and they knew the pit boss and everything else, and they were sure that it was a sure thing; you couldn't lose any money whatsoever." Lane asked why he was needed. McKinny said both he and Padilla were well known and marked

men in Las Vegas and they needed a reputable businessman to front for them; he had won as much as $60,000 by his system and had bought his home in Las Vegas with those winnings. Lane again asked why they needed him since they were doing so well. They told him they were broke and needed a businessman not only to front for them but also to provide a bank roll. McKinny asked Lane whether he could raise four or five thousand dollars. Lane said he could and asked what his portion of the winnings would be. He was told he would receive 50 per cent and McKinny and Padilla would divide the other half. They told Lane he was going to make the bets. McKinny told Lane they would make plane reservations for him on TWA and hotel reservations for him at the Riviera Hotel in Las Vegas. He was told to go alone. As they left the restaurant, Padilla said to McKinny, "Don't forget my share." McKinny replied, "I will see you next week."

Lane went to his bank and withdrew $4,000 cash. The next day McKinny called him and said he had made hotel reservations at the Riviera but had not been able to make plane reservations. He asked Lane to make his own plane reservation. Lane did so. All the foregoing facts relating to count I took place within the county of Los Angeles, California.

Lane arrived in Las Vegas the next day. He checked into the Riviera and found a note waiting for him which

read: "Dan McKinny will call you shortly. Unable to meet you at the airport." McKinny called him shortly and asked him whether he had come alone and brought the money. Lane said he had $4,000. McKinny said it would take $5,000 "to swing the deal." Lane said, "Well, that creates no problem. I will go down and cash a check for a thousand dollars at the hotel." He then went to a hotel on the "Strip" where he had credit and cashed a check for $1,000. He returned to his room. McKinny arrived shortly. In a few minutes the telephone rang and a person asked Lane if "Don McKinsey" was there. Lane said, "Don McKinsey, or do you mean Dan McKinney?" The voice said, "Yes, I mean Dan McKinney." McKinny talked on the phone and in a few minutes a man came into the room. He was introduced to Lane as Bob Cox. Cox had a dealer's apron sticking out of his pocket. Cox told Lane that McKinny "was well known in Las Vegas, knew all the pit bosses and everything else, and he was a professional gambler, and how he was taking different casinos and never did an honest day's work in his life, or words to that effect. And he said, 'It's a sure cinch that you can't lose any money at this system.' " Cox left. Lane and McKinny started down to the casino. On the way Lane asked, "Well, where are we heading for now?" McKinny replied, "We will go over to the Star Dust. This is where we will be playing." They arrived at the Star Dust about 7 p.m. McKinny said, "Well, it's a little early yet. The fellows I know, they are not around the casino

right now. They come on at 7:20. Why don't you try your luck at the crap table?"

Lane bought a hundred dollars worth of $5.00 chips, "made a few passes with the dice, and won a little bit of money." About 10 minutes later McKinny punched Lane on the shoulder and said, "It's getting kind of late. We'd better cash that money in $100 chips so we will be ready to play roulette at 7:20. Why don't you go ahead and continue playing, and I will run over and get the $100 chips at the cashier's window, and I will be right back with your chips. Then you can start playing roulette at 7:20." Lane asked, "Well, can't I get the chips here? McKinny replied, "No, they won't give you $100 chips at the table. You have to get them at the cashier's window." Lane gave McKinny $4,900 in $100 bills with which to buy chips. He watched McKinny go to the cashier's window, then turned to the dice table and threw the dice. In about 15 seconds he looked up and McKinny was no longer in sight. He continued to gamble about 15 minutes when he realized he had been "taken." He reported the transaction to the security officer in the casino and returned to Los Angeles the following morning. He did not see McKinny after he gave him the money.

Lane contacted Padilla in Los Angeles by phone on December 8 and this conversation occurred: Lane: "Mr. Padilla, it was a fine way you set me up." Padilla: "What do you mean, Johnny?" Lane: "You know darn

well what I mean. It was a con game all the way and you had a part in it." Padilla: "Honest, Johnny, I didn't have nothing to do with it. I never knew he ran out with the money. Can I see you?" Lane: "Well, you better get over and see me quite fast." Padilla went over the next morning and in the conversation said, "I never believed Doug Anderson would do that." Lane asked, "Why did you introduce him to me as Dan McKinney?" Padilla "put his hands up to his face and made no comment." Padilla then said he would try to get Lane's money back for him. A week later Padilla said that he was unable to locate McKinny, calling him Anderson, that he knew Lane had been "taken" for the money and if given time he would get it back. On December 18 Padilla gave Lane a demand note for $4,900. The note was not paid and Lane reported the transaction to the district attorney.

Count II

A. B. Valenzuela was introduced to Padilla about January 1, 1959. He saw him again about January 25. Padilla told Valenzuela "he had a deal in Las Vegas that would make some money"; they would go to Las Vegas but he would have to contact his partner and they would meet the next evening at the Embassy Club in Gardena; Padilla said "he had things fixed"; they "could clean up," and "probably make ten, twelve thousand dollars in a night."

Valenzuela went to the Embassy Club the following evening. Padilla came in with a man he introduced to Valenzuela as "Bill." Bill is defendant Anderson. Bill had a dark, "handlebar mustache" and wore a wig. They told Valenzuela how they would "work"—Bill would lead, Valenzuela would "stay ten or twelve feet behind him," and when he told him (Valenzuela) "the pitch was on," he was "to go on and start gambling." Valenzuela was told he would finance "the deal" and would have to have about four to five thousand dollars. Profits were to be shared three ways, with expenses "off the top." He was told that when they had everything ready they would call him. Valenzuela gave Padilla his business card with his telephone number on it.

Padilla called Valenzuela the next day, said he had every thing ready, and he would meet him that evening. Valenzuela then contacted the district attorney and two investigators went to his home. They set up a recording device in his bedroom and remained with him. Padilla telephoned again and said he would be at Valenzuela's home at 8:30. Valenzuela said he had $4,000 in cash. Padilla said it was a good deal and made some reference to the reservations. Padilla went to Valenzuela's home about 7:30 that evening. Valenzuela introduced the investigators as "oil men." He and Padilla went out for about 15 minutes and had a drink. On their return, the investigators were in the bedroom with the

sound equipment on. Padilla told Valenzuela they were to play dice and blackjack in Las Vegas. Valenzuela showed him what purported to be $4,000 in $100 bills; he had $100 bills on the outside and $1.00 bills on the inside.

Padilla was arrested as he was about to leave. One of the investigators asked him, "What's the situation in this matter and how did you get mixed up in it?" Padilla hung his head for a moment and the investigator asked him, "Freddie, don't you want to tell me the story on it?" Padilla replied, "I don't know how I got mixed up in it. I'm ashamed of it." The investigator said, "It's pretty obvious that this situation is a similar one to the John Lane case." Padilla answered, "I didn't get one dime of the money." One of the investigators asked Padilla how he arrived there. He said he had been driven by a "Filipino" boy he knew as Joe. The other investigator saw a Cadillac circling the block. Other officers stopped the Cadillac. Defendant Anderson was driving it. He did not have a wig or a mustache. Valenzuela asked Anderson, "Where in the hell is your mustache?" Anderson said, "Who are you? I don't even know you." Valenzuela replied, "The hell you don't . . . you're wearing the same shirt you had on last night." Anderson made no comment. All of the facts relative to count II took place within the county of Los Angeles, California.

In essence the second assignment of error is that on the foregoing facts the superior court did not have jurisdiction to try and convict defendants.

The Penal Code provides for punishment of all persons who commit a part of a crime within this state or who, with intent to commit a crime, do any act within this state in execution or part execution of such intent which culminates in the commission of a crime in another state. (Pen. Code, §§ 27, subd. 1,[2] 778a.[3])

In *People v. Buffum*, 40 Cal. 2d 709 [256 P. 2d 317], it was held that these sections, construed in the light of the general principle that ordinarily a state cannot impose punishment for acts done outside its territory, require that the acts of the defendants within this state amount to at least an attempt. The court said (p. 716):

"It is apparent from the authorities which have discussed subdivision 1 of section 27 and similar statutes in other jurisdictions that such a provision can apply where the acts done within the state are sufficient to amount to an attempt to commit a crime but not otherwise. . . . To read such a statute as author-

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[2]Penal Code, section 27: "The following persons are liable to punishment under the laws of this state:

"1. All persons who commit, in whole or in part, any crime within this state. . . ."

[3]Penal Code, section 778a: "Whenever a person, with intent to commit a crime, does any act within this state in execution or part execution of such intent, which culminates in the commission of a crime, either within or without this state such person is punishable for such crime in this state in the same manner as if the same had been committed entirely within this state."

izing the punishment by one state of acts which do not amount to an attempt but are merely preparatory to the commission of a crime in another state would seem tantamount to an effort to regulate conduct in the other jurisdiction. [Citation.]

"Section 778a of the Penal Code should also be construed as applying only where the acts done within the state amount to an attempt. By its terms the section is limited to acts done 'in execution or part execution of' an intent to commit a crime, and these words are comparable to the expression 'in whole or in part' as used in subdivision 1 of section 27. The statute further requires that what is done in the state must be of such a nature that it 'culminates' in the commission of an offense, and this is analogous to the requirement in attempt cases that there must be a 'direct' ineffectual act towards consummation of the crime. (*Cf. People v. Miller*, 2 Cal. 2d 527, 530 [42 P. 2d 308].) Our construction of section 778a is in accord with the decision in *People v. MacDonald, supra*, 24 Cal. App. 2d 702, 709-711 [76 P. 2d 121], which held that the section did not warrant a conviction for contracting an incestuous marriage where it appeared that the defendant and his daughter, while in California, formed an intent to marry and then travelled on a train from California to Arizona, in which jurisdiction the ceremony was performed."

The sole question is whether under each count the acts of defendants in this state amounted to an attempt to violate Penal Code, section 487, subdivision 1.

Grand theft under Penal Code, section 487, subdivision 1, is included in theft as defined in Penal Code, section 484 (*People v. Coe,* 171 Cal. App. 2d 786, 792-793 [342 P. 2d 43]), which in turn includes larceny by trick and device and obtaining property by false pretenses. (*People v. Otterman,* 154 Cal. App. 2d 193, 205 [316 P. 2d 85].) "Although the crimes of larceny by trick and device and obtaining property under false pretenses are much alike, they are aimed at different criminal acquisitive techniques. Larceny by trick and device is the appropriation of property, the possession of which was fraudulently acquired; obtaining property by false pretenses is the fraudulent or deceitful acquisition of both title and possession. . . . The elements of the several types of theft included within section 484 have not been changed, however, and a judgment of conviction of theft, based on a general verdict of guilty, can be sustained only if the evidence discloses the elements of one of the consolidated offenses." (*People v. Ashley,* 42 Cal. 2d 246, 258 [267 P. 2d 271].) If the acts of defendants committed in California amount to attempts to commit grand theft, they were attempts to commit larceny by trick and device.

"In order to establish an attempt, it must appear that the defendant had a specific intent to commit a

crime and did a direct unequivocal act toward that end." (*People v. Gallardo,* 41 Cal. 2d 57, 66 [257 P. 2d 29].) "Preparation alone is not enough, there must be some appreciable fragment of the crime committed, it must be in such progress that it will be consummated unless interrupted by circumstances independent of the will of the attempter and the act must not be equivocal in nature." (*People v. Buffum,* 40 Cal. 2d 709, 718 [256 P. 2d 317]; *People v. Miller,* 2 Cal. 2d 527, 530 [42 P. 2d 308].) "Preparation is devising or arranging the means or measures necessary for the commission of the offense. The attempt is the direct movement toward the commission after the preparations are made." (*People v Franquelin,* 109 Cal. App. 2d 777, 784 [241 P. 2d 651].)

The conduct of defendants within this state warranted a finding by the jury that defendants had the specific intent to obtain the money of each of the prosecuting witnesses through trick and device and that the contacts were made with them expressly for the purpose of laying the groundwork to that end. The crucial question is whether the representations made by defendants amount to direct unequivocal acts which would lead to culmination of the offenses unless interrupted by circumstances independent of any actions on their parts.

The making of false representations may amount to an attempt to commit theft. (See *People v. Camo-*

deca, 52 Cal. 2d 142 [338 P. 2d 903], in which the only further act necessary to consummate the crime of grand theft was actual receipt of the money by the defendant.) Where a defendant, with the intent to defraud, makes false representations designed to lead another without further word or act by defendant to transfer possession of his property to the defendant on the basis of those representations, the making of the representations is a direct and unequivocal act toward commission of the crime. In such a case, the separate crime of attempt is complete whether the thief ever obtains the property. It is likewise complete in the jurisdiction where the misrepresentations are made although he receives the property in another jurisdiction. In the latter situation, our courts may try and convince the defendant of the crime of grand theft under the power granted by Penal Code, sections 27, subdivision 1, and 778a. (See *People v. Chapman,* 55 Cal. App. 192 [203 P. 126], in which the money of the victims was relinquished through a correspondent bank in Boston and credited or paid to defendant by a bank in California; *People v. Harden,* 14 Cal. App. 2d 489 [58 P. 2d 675], in which the money was transferred by the prosecuting witness to the defendants in Tia Juana; and on receipt of the money by them, they returned to San Diego with part of it in their possession, a "continuing trespass," as later discussed.) In the cases cited, the false representations were sufficient to set the crime in motion and to effect the transfer of the property from its

owner to the defendants without further inducement or action on their parts.

In the present case defendant Padilla introduced defendant Anderson by a fictitious name. Anderson disguised himself by wearing a wig and heavy mustache. Defendants told Lane they had a system which made it impossible to lose at roulette; that even if something went wrong, "they knew the dealers and they knew the pit boss and everything else, and they were sure that it was a sure thing; you couldn't lose any money whatsoever." Lane was to make the bets. Padilla told Valenzuela "he had a deal in Las Vegas that would make some money . . ., he had things fixed and we could clean up; we'd probably make ten, twelve thousand dollars in a night." "Bill [Anderson] said that he would lead, and then I'd stay ten or twelve feet behind him, and when he told me the pitch was on, for me to go on and start gambling."

We are of the opinion the representations come within the range of acts comprising preparation but are insufficient as acts amounting to attempts. Defendants' representations that they had a system for winning or that they had it fixed so they could not lose resulted in Lane's taking his funds to Las Vegas and were sufficient to have resulted in Valenzuela's doing likewise. But they were not directed to the transfer of the prosecuting witnesses' money to defendants; they were directed toward arranging situations in which the prosecuting witnesses would have the money in cash on their persons at a place conducive to fast transfer

of cash. They did not tend to set in motion circumstances sufficient to culminate in the commission of the crimes.

In each instance some further unequivocal act by defendants in Las Vegas was required before either Lane or Valenzuela would have had cause to part with his money. Nowhere in the record is there evidence that they were to transfer possession of their money to defendants as part of defendants' represented scheme. On the contrary, Lane testified that he was to make the bets and Valenzuela testified that he was to start gambling when Anderson told him "the pitch was on." The direct act which led to Lane's transfer of his money to Anderson was Anderson's fraudulent statement to Lane in the Star Dust casino at Las Vegas: "I will run over and get the $100 chips at the cashier's window, and I will be right back with your chips." Although the criminal scheme had its beginnings in this state, it appears that, whether by design or fortune, defendants' acts in this state were not such direct and unequivocal acts as would have led to the consummation of the crimes unless interrupted by circumstances independent of the will of defendants.

As said in *People v. Buffum*, 40 Cal. 2d 709 (p. 718 [256 P. 2d 317]):

"No case has been cited or found which holds that persons can be convicted of an attempt to commit abortions if they do no more within the state than make arrangements for transportation and then take women

from California to Mexico for the purpose of performing abortions upon them in that country. It is our opinion that, under the rules set forth in the Miller case [2 Cal. 2d 527], such conduct is merely preparatory and does not constitute a direct, unequivocal act done toward the commission of the offense specified by section 274 of the Penal Code."

The People argue the court had jurisdiction on the theory of "continuing trespass," citing *People v. Case*, 49 Cal. 2d 24, 28 [313 P. 2d 840]. The case is not in point. In *Case*, the prosecuting witness took a plane from Anchorage to Portland, Oregon. While the prosecuting witness was asleep enroute the defendant took her money. On arriving in Portland he admitted to her he had taken it. By false promises to return the money and by threats, he forced her to accompany him to several places, eventually to Los Angeles where they both obtained employment. He was later charged and convicted under Penal Code, section 487, subdivision 1.[4] On review the defendant contended the trial court lacked jurisdiction. The court stated (p. 28) the defendant "committed a 'continuing trespass,' which is expressly recognized by our statutes and cases. . . .

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[4]Penal Code, section 487, subdivision 1: "Grand theft is theft committed in any of the following cases:

"1. When the money, labor or real or personal property taken is of a value exceeding two hundred dollars ($200); provided, that when domestic fowls, avocados, olives, citrus or deciduous fruits, nuts, and artichokes are taken of a value exceeding fifty dollars ($50); provided, further, that where the money, labor, real or personal property is taken by a servant, agent or employee from his principal or employer and aggregates two hundred dollars ($200) or more in any 12 consecutive month period, then the same shall constitute grand theft."

Section 497 of the Penal Code plainly indicates the Legislature's intent to denounce and punish as larceny the bringing into this state of personal property stolen in another country or state." These sections are applicable to situations where the defendant brings the property stolen into this state. "This view rests on the theory that since the rights of possession and ownership remain in the true owner, every act of the thief in the removal of the property is, in contemplation of law, a new taking and carrying away, a complete larceny in itself." (*People v. Case, supra,* 49 Cal. 2d 24, 29.) At bar there was no evidence showing that the money obtained in Las Vegas was brought back to California. The theory of "continuing trespass" is not applicable.

We hold that under neither count do the acts of defendants in this state amount to an attempt, and that the trial court did not have jurisdiction to try or convict defendants of the offenses charged in the information.

Shinn, P. J., concurred.

FORD, J.—I dissent.

Two elements are necessary to establish an attempt, namely, "a specific intent to commit a crime and a 'direct' ineffectual act done towards its commission." (*People v. Buffum,* 40 Cal. 2d 709, 718 [256 P. 2d 317].) In the prevailing opinion it is stated that the "conduct of defendants within this state warranted a

finding by the jury that defendants had the specific intent to obtain the money of each of the prosecuting witnesses through trick and device." I agree with that statement. (See *People v. Darnell,* 97 Cal. App. 2d 630, 634 [218 P. 2d 172]; *People v. Lyles,* 156 Cal. App. 2d 482, 486 [319 P. 2d 745]; *People v. Anderson,* 95 Cal. App. 225, 228 [272 P. 755]; *People v. Heinrich,* 65 Cal. App. 510, 515.) But I believe that, as to each count, there were acts on the part of the appellants in this state which were sufficient, when joined with such intent, to constitute an attempt.

Inherent in the crime of larceny by trick and device is the obtaining of possession of property by means of fraud and trickery by one who has a preconceived design to appropriate such property to his own use. (*People v. Bartges,* 126 Cal. App. 2d 763, 770 [273 P. 2d 49]; *People v. McCabe,* 60 Cal. App. 2d 492, 496 [141 P. 2d 54]; *People v. Sing,* 42 Cal. App. 385, 391 [183 P. 865].) In each instance, the fraudulent statements and representations made by the appellants constituted the device used by them to further their confidence game. (See *People v. Lafka,* 174 Cal. App. 2d 312, 314-315 [344 P. 2d 619]; *cf. People v. Johnson,* 136 Cal. App. 2d 665 [289 P. 2d 90]; *People v Darnell,* 97 Cal. App. 2d 630 [218 P. 2d 172].) In *People v. Buffum, supra,* 40 Cal. 2d 709, the arranging for transportation and the actual transportation of the women formed no part of the crime of abortion and was merely conduct preparatory in nature rather than a direct,

unequivocal act done toward the commission of the offense. But in the present case, the respective acts in this state directed toward each intended victim formed part of the essence of the crime intended and constituted an appreciable fragment thereof. As stated in *People v. Von Hecht,* 133 Cal. App. 2d 25, at page 39 [283 P. 2d 764]: "And, once the design of a person to commit crime is clearly shown, slight acts in furthering of the design will constitute an attempt (*People v. Anderson,* 1 Cal. 2d 687, 690 [37 P. 2d 67])." An overt act need not be the ultimate act toward the consummation of the design; it is sufficient if it is the first or some subsequent step directed towards that end after the preparations are made. (*People v. Gibson,* 94 Cal. App. 2d 468, 470 [210 P. 2d 747]; *People v. Parrish,* 87 Cal. App. 2d 853, 856 [197 P. 2d 804].)

I would affirm the judgment.

EXHIBIT "B"

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA
IN BANK

THE PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiff and Respondent,*	)	Crim. 6824
v.	)	
DOUGLAS ANDERSON and FRED PADILLA, *Defendants and Appellants.*	)	

Defendants, Douglas Anderson and Fred Padilla, were charged in count 1 with grand theft and in count 2 with attempted grand theft. At their trial by jury evidence as to count 1 showed that defendants set a larcenous scheme in motion in Los Angeles and consummated it in Las Vegas; evidence as to count 2 showed that they began to carry out a similar scheme in Los Angeles but did not complete the theft because the victim was suspicious and notified the authorities. The jury found defendants guilty as charged. Their motions for new trial were denied. Defendants appeal from the ensuing judgments of conviction but not from

the orders denying their motions for new trial. They contend that the information fails to allege public offenses with sufficient particularity to give them notice and opportunity to prepare their defense, and that the evidence as to each count shows that the acts of defendants in California amounted at most to mere preparation for crime, not to criminal attempts. We have concluded that these contentions are without merit and that the judgments should be affirmed.

Sufficiency of the Accusatory Pleading. The information, essential allegations of which are quoted in the margin,[1] is in a form which is permitted by, and has been in common use since, the enactment of the following legislation in 1927: Stats. 1927, ch. 619, amended Penal Code, sections 484 through 490, and added section 490a so that the crimes formerly known as larceny (including larceny by trick or device), embezzlement and obtaining property by false pretenses are now all known as theft. Stats. 1927, ch. 612, amended section 952 to provide that "In charging theft it shall be sufficient to allege that the defendant unlaw-

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[1]Count 1 alleges that defendants "are accused . . . of the crime of GRAND THEFT in violation of Section 487, Sudivision 1, Penal Code of California, a felony, committed as follows: That [defendants] . . . on or about the 6th day of December, 1958, at and in the County of Los Angeles, . . . did willfully, unlawfully and feloniously take Forty Nine Hundred and 00/100 Dollars ($4900), in money, lawful money of the United States, the personal property of John P. Lane."

Count 2 alleges that defendants "are accused . . . of the crime of ATTEMPTED GRAND THEFT in violation of Section 487, Subd. 1 P.C. and Sec. 664 P.C., a felony, committed as follows: That [defendants] . . . on or about 27th day of January, 1959, at and in the County of Los Angeles, did willfully, unlawfully and feloniously attempt to take Four Thousand and 00/100 Dollars ($4000), in money, lawful money of the United States, the personal property of A. B. Valenzuela."

fully took the . . . property of another." (Other amendments simplifying the rules of pleading are Stats. 1927, ch. 610, amending section 959, Stats. 1927, ch. 611, amending sections 954 and 956, and Stats. 1927, ch. 613, amending section 951.)

Because of the quoted amendment of section 952, "it was not necessary for the information to allege the particular type of theft involved, such as false pretenses, embezzlement, or larceny by trick and device." (*People v. Nor Woods* (1951), 37 Cal. 2d 584, 586 [2].) "Notice of the particular circumstances of the offense is given not by detailed pleading but by transcript of the evidence before the committing magistrate . . .; defendant is entitled to such transcript under section 870 . . . of the Penal Code." (*People v. Roberts* (1953), 40 Cal. 2d 483, 486 [3].)

Prosecution Evidence as to Count 1. John P. Lane from time to time had placed bets on horses with defendant Padilla for more than a year prior to December 1958. On December 5 Padilla introduced Lane to defendant Douglas Anderson. Anderson wore a wig and heavy mustache and was introduced as "Dan McKinny." Padilla said that "McKinny" was a professional gambler from Las Vegas with a roulette system by which, according to Lane's testimony, he could "double or triple my money in the course of a few hours. . . . [I]t would be impossible to lose, and even if things did go wrong, they knew the dealers and they

knew the pit boss and everything else, and they were sure it was a sure thing." Defendants explained that they were "marked men in Las Vegas, and they needed a reputable business man to front the deal for them"; that although "McKinny" on several occasions had won as much as $60,000 by his system, defendants were currently in need of a "bank roll" of $4,000 or $5,000. Lane believed in and relied on defendants' representations until the hereinafter described occasion in Las Vegas when he decided he had been "taken." He agreed to supply the bank roll in return for 50 per cent of the winnings. It was further agreed that Padilla would receive one half of "McKinny's" share of the winnings.

"McKinny" made a reservation for Lane at a Las Vegas hotel. Lane withdrew $4,000 from his bank account and took it to Las Vegas. There "McKinny" said that "it would take $5,000 to swing the deal" and Lane cashed a check for $1,000. "McKinny" repeated his representations "about this sure proof system." A man whom "McKinny" introduced as "Bob Cox" told Lane that "McKinny . . . knew all the pit bosses and everything else, and he was a professional gambler, and how he was taking different casinos and never did an honest day's work in his life. . . . And he said, 'It's a sure cinch that you can't lose any money at this system.' "

"Cox" then left and "McKinny" and Lane went to a casino. "McKinny" said, "The fellows I know.

they are not around the casino right now. . . .Why don't you try your luck at the crap table?" Lane cashed a $100 bill into $5 chips and proceeded to play dice. "McKinny" said, "We'd better cash that money in $100 chips so we will be ready to play roulette . . . Why don't you go ahead and continue playing . . . and I will run over and get the $100 chips . . . at the cashier's window." Lane asked, "Well, can't I get the chips here?" "McKinny" replied, "No, they won't give you $100 chips at the table."

Lane handed "McKinny" $4,900 and "McKinny" disappeared. Lane continued to play dice for 15 minutes, then "I more or less knew that I was taken." He reported the matter to the security officer of the casino and the sheriff's department of Las Vegas, and after an unsuccessful search for "McKinny" he returned to Los Angeles.

On December 8, 1958, in Los Angeles, Lane got in touch with Padilla and told him, "[I]t was a fine way you set me up." Padilla said, "What do you mean, Johnny?" Lane replied, "It was a con game all the way and you had a part in it." Padilla said, "Honest, Johnny, I didn't have nothing to do with it," and agreed to attempt to locate "McKinny." The next day Padilla told Lane, "I never believed Doug Anderson would do that." This is the first occasion on which Padilla in speaking to Lane referred to "McKinny" by his actual name. Lane said, "I thought you intro

duced me [*sic*] as Dan McKinny. . . . Why did you introduce him to me as Dan McKinny?" Padilla "put his hands up to his face and made no comment."

Thereafter Padilla told Lane "that he knew I was taken for the money, and that if . . . he couldn't get in touch with Doug Anderson to get the money back from him, he would raise the money himself and deliver it back to me."

On December 18, 1958, Padilla at his own suggestion executed a demand note for $4,900 to Lane. Thereafter Padilla repeatedly asked for more time in which to raise the money and Lane said that if it was not forthcoming he would report the matter to the Los Angeles district attorney, which he eventually did. On January 28, 1959, Lane saw defendant Anderson, without the wig and mustache, in a police lineup and identified him.

Prosecution Evidence as to Count 2. Adolph Valenzuela, a businessman in Los Angeles county, met Padilla in December 1958 or January 1959. About January 25, 1959, Padilla came to Valenzuela and "said that he had a deal in Las Vegas that would make money . . . ; we'd probably make ten, twelve thousand dollars in a night." Padilla arranged for Valenzuela to meet his "partner." The "partner," defendant Douglas Anderson, wearing a wig and mustache, was introduced to Valenzuela as "Bill." Defendants agreed to make a hotel reservation for Valenzuela in Las Vegas. Val-

enzuela testified, "Bill said that he would lead, and then . . . when he told me the pitch was on, for me to go on and start gambling . . . I was supposed to finance the deal, about four to five thousand dollars"; winnings were to be divided equally among "Bill," Padilla and Valenzuela, with Valenzuela's expenses "off the top."

Valenzuela became suspicious of defendants' representations and reported the matter to the office of the district attorney. On the night of January 27, 1959, when Padilla visited Valenzuela's residence to further discuss their arrangements, investigators and a tape recorder were concealed in an adjoining room.

Padilla asked if Valenzuela had the money. Valenzuela replied that he did and displayed a roll of bills which "was supposed to be $4,000, but it wasn't. . . . I had hundred dollar bills on the outside, with $1.00 bills on the inside."

The tape recording of their conversation includes the following: Padilla said that the Las Vegas reservation for Valenzuela had been made for the next day; that "Bill" was "real liked around Las Vegas" and "good in cards and dice"; that the game was "already fixed." Valenzuela asked, "[W]hat guarantee have I got?" Padilla replied that "Bill" would "maybe put up $1500 himself." Later during the conversation Valenzuela again asked about a "guarantee" and Padilla replied, "You're going to play the hand; you're going

to win the money you put on it" Valenzuela asked, "What is Bill's last name? Where can I get ahold of him?" Padilla did not answer the first question but said, "He hangs around the El Rancho all the time." Padilla later said that "Bill" would meet Valenzuela when he arrived in Las Vegas and introduce the dealer who would "explain you the whole thing."

When Padilla indicated his intention of leaving Valenzuela's residence, the investigators came from the next room and announced that he was under arrest. One of the investigators asked Padilla, "What's the situation in this matter and how did you get mixed up in it?" Padilla "hung his head for a moment, didn't answer," then, questioned again, he said, "I don't know how I got mixed up in it. I'm ashamed of it." The investigator said, "It's pretty obvious that this situation is a similar one to the John Lane case." Padilla replied, "I didn't get one dime of the money."

Police officers found defendant Anderson driving Padilla's car in the vicinity of Valenzuela's residence. Valenzuela said to Anderson, "Where in the hell is your mustache?" Anderson said, "Who are you? I don't even know you." Valenzuela replied, "The hell you don't. . . . [Y]ou're wearing the same shirt you had on last night." To this Anderson made no reply.

Defense Evidence. Defendants took the stand, contradicted much of the prosecution evidence, and gave assertedly innocent explanations as to some of their

conduct. Their would-be exculpatory testimony was not believed by the jury and need not be recounted.

Sufficiency of the Evidence to Show Attempted Grand Theft in California. The case of *People v. Buffum* (1953), 40 Cal. 2d 709, 716 [5, 6], holds that under Penal Code, section 27 (subd. 1)[2] and section 778a,[3] a crime committed in part in California can be punished here only if the acts committed in California amount to a criminal attempt, "a 'direct' ineffectual act towards consummation of the crime," amounting to more than mere preparation.

The "direct" acts necessary to constitute an attempt to obtain property by false pretenses can be simply the making of misrepresentations calculated to induce the victim to part with his property. (*People v. Camodeca* (1959), 52 Cal. 2d 142, 145 [1-5a].) Here the offense undertaken by defendants in California (and as to count 1, consummated in Nevada) was not the obtaining of property by false pretenses (where the victim intends to part with title to his property) but rather larceny by fraud, trick or device (where the victim intends to part with possession only). (*People v. Nor Woods* (1951), *supra*, 37 Cal. 2d 584, 586 [4]; *People*

[2]Penal Code, section 27: "The following persons are liable to punishment under the laws of this state:
"1. All persons who commit, in whole or in part, any crime within this state. . . ."

[3]Penal Code, section 778a: "Whenever a person with intent to commit a crime does any act within this state in execution or part execution of such intent, which culminates in the commission of a crime, either within or without this state such person is punishable for such crime in this state in the same manner as if the same had been committed entirely within this state."

v. Dolbos (1905), 146 Cal. 734, 736.) The making of misrepresentations with the requisite specific intent on the part of defendants, however, can constitute an attempt to commit the type of theft here involved as well as the type shown in Camodeca.

Here, as to count 1, the trier of fact could and presumably did determine that defendants in California, with the specific intent to consummate theft in Las Vegas, did everything necessary to get their victim and his money to Las Vegas so that defendant Anderson could get his hands on the money by making the final misrepresentation that he was going to buy chips with it. As to count 2, the trier of fact could and presumably did find that defendants similarly did everything necessary to get their victim and his money to Las Vegas for a like larcenous purpose. The latter scheme, however, failed because of the victim's lack of perduring credulity and ensuing complaint to the district attorney. In our opinion the fact that the scheme in each case required a final step of fraud, trickery or device outside California to complete the continuingly planned reduction of the victim's money to the thief's actual possession did not make the essential acts (misrepresentations) of defendants in California any the less "direct" acts towards consummation of the projected theft.

As to offenses commenced in California and consummated without the state we recognize that "the Legislature is not ordinarily concerned with regulating

conduct in other jurisdictions." (*People v. Burt* (1955), 45 Cal. 2d 311, 314 [1]; *People v. Buffum* (1953), *supra*, 40 Cal. 2d 709, 716 [1].) But California has a legitimate interest in applying its penal sanctions to those who by misrepresentations in this state lure persons and their property from this state to another jurisdiction for the purpose of there appropriating the property. We approve and follow the holding of the District Court of Appeal in *People v. Chapman* (1921), 55 Cal. App. 192, 197, that "the legislature, in subdivision 1 of section 27 [*ante*, footnote 2], has declared, in effect, that all persons who make in this state any false or fraudulent representations whereby money or property is obtained without the state are punishable just as though all the acts had taken place in this state."

For the reasons above stated the judgments are affirmed.

SCHAUER, *J.*

We Concur:

GIBSON, *C.J.*
TRAYNOR, *J.*
McCOMB, *J.*
PETERS, *J.*
WHITE, *J.*
DOOLING, *J.*